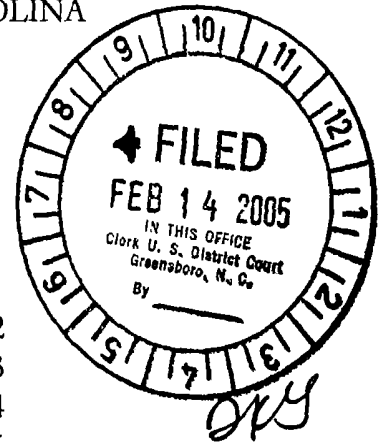


302.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, )  
 )  
 v. )  
 )  
 JAMES LESTER PENNIEGRAFT, )  
 DANTE RASHAD PENNIEGRAFT, )  
 SANDRA BANKS THOMPSON, )  
 TOMMY PENNIEGRAFT, )  
 JOANN PENNIEGRAFT CHEEK, )  
 EARL DWAYNE BOSS, )  
 ORLANDO BURTON, )  
 STEVIE LOUIS GRAVES )  
 DEBORAH PENNIEGRAFT MAPP, )  
 HERMAN GENE McBRIDE, )  
 and VALERIE KAYE PENNIEGRAFT, )  
 Defendants. )

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ORDER

BEATY, District Judge.

This matter came before the Court for hearing on February 11, 2005 on various motions by the Defendants in this case. At that time, the Court determined first that Defendant Valerie Kaye Penniegraft had chosen not to appeal her sentence, and the Court's prior sentence of probation will therefore remain in full force and effect as to that Defendant. Defendant Stevie Louis Graves also chose not to appeal his sentence, and his prior Guidelines sentence will likewise remain in full force and effect. Therefore, Defendant Graves is hereby given a reporting date of March 18, 2005.

Defendants James Lester Penniegraft, Earl Dwayne Boss, Tommy Penniegraft, Orlando Burton, Sandra Banks Thompson, Dante Rashad Penniegraft, Deborah Penniegraft Mapp, Joann Penniegraft Cheek, and Herman Gene McBride have each filed a notice of appeal seeking review

of their sentences in light of the recent decision of the United States Supreme Court in United States v. Booker, – U.S. –, 125 S. Ct. 738, – L. Ed. 2d – (2005), and have now filed motions with this Court requesting release pending appeal pursuant to 18 U.S.C. § 3143(b) [Document Nos. 287, 246, 296, 294, 227, 293, 236, 285, and 292, respectively]. Pursuant to 18 U.S.C. § 3143(b), a defendant who has been sentenced is to be detained unless the Court finds (1) “that the person is not likely to flee or pose a danger to the safety of any other person or the community” and (2) “that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in . . . a sentence that does not include a term of imprisonment, or a reduced sentence to a term of imprisonment less than . . . the expected duration of the appeal process.” 18 U.S.C. § 3143(b). For the reasons announced by the Court during the hearing on February 11, 2005, this Court finds that Defendants James Lester Penniegraft, Earl Dwayne Boss, Tommy Penniegraft, Orlando Burton, and Dante Rashad Penniegraft have each failed to meet their burden under 18 U.S.C. § 3143(b) because even though they have raised a substantial question of law in light of Booker and in light of the decision of the Fourth Circuit in United States v. Hughes, – F.3d –, 2005 WL 147059 (4th Cir. Jan. 24, 2005), they have not established that the question raised in their appeals is likely to result in “a reduced sentence to a term of imprisonment less than . . . the expected duration of the appeal process.” Similarly, as to Defendant Sandra Banks Thompson, the Court finds that for the reasons announced by the Court during the previous hearing on February 9, 2005,<sup>1</sup> Defendant Sandra Banks Thompson has also failed to meet her burden under 18 U.S.C. § 3143(b) because she has not established that the questions raised by Booker and Hughes in her case are likely to result in “a

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<sup>1</sup> Due to a scheduling conflict, the Court held a hearing as to Defendant Sandra Banks Thompson on February 9, 2005.

reduced sentence to a term of imprisonment less than . . . the expected duration of the appeal process.” Therefore, the Motions by Defendants James Lester Penniegraft, Earl Dwayne Boss, Tommy Penniegraft, Orlando Burton, Sandra Banks Thompson, and Dante Rashad Penniegraft for Release Pending Appeal [Document Nos. 287, 246, 296, 294, 227, and 293, respectively] are DENIED, and these Defendants will each be required to begin serving the Guidelines sentence previously imposed by the Court prior to the Supreme Court’s decision in Booker. Defendant Sandra Banks Thompson is given a reporting date of April 8, 2005. Defendants Earl Dwayne Boss and Dante Rashad Penniegraft are each given a reporting date of March 18, 2005. Defendants James Lester Penniegraft, Tommy Penniegraft, and Orlando Burton have each received a previous designation from the Bureau of Prisons, and are therefore each given a reporting date of February 18, 2005.

As to Defendants Deborah Penniegraft Mapp, Joann Penniegraft Cheek, and Herman Gene McBride, the Court finds that these Defendants have established a substantial question of law based on the decision of the Supreme Court in Booker and the decision of the Fourth Circuit in Hughes. The Court further finds that as to these Defendants, the question of law presented by their respective appeals is likely to result in a reduced sentence to a term of imprisonment less than the expected duration of the appeal process, particularly since it is difficult to determine at this time what the expected duration of the appeal process will be.<sup>2</sup> Therefore, the Motions by Defendants Deborah Penniegraft Mapp, Joann Penniegraft Cheek, and Herman Gene McBride for Release

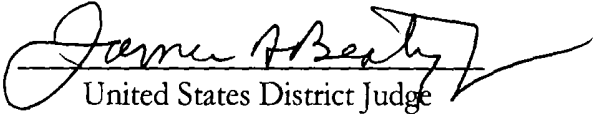
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<sup>2</sup> The Court notes, however, that it has not made any determination as to what the final sentence would be if these cases are remanded for resentencing. The Court will make the appropriate determinations at the time of resentencing if these cases are remanded in light of Booker and Hughes.

Pending Appeal Pursuant to 18 U.S.C. § 3143(b) [Document Nos. 236, 285, 292] are GRANTED.

Defendants Deborah Penniegraft Mapp, Joann Penniegraft Cheek, and Herman Gene McBride may remain on release pending appeal under the same conditions as were previously imposed for pre-trial release in this case.

This, the 14 day of February, 2005.

  
United States District Judge